

THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION No.3739 of 2001

Dated 15-11-2005

Between:

Dr. T. Pandurangam.

..... PETITIONER

AND

The Joint Transport Commissioner and Secretary, Hyderabad,
and two others.

.....RESPONDENTS

THE HON'BLE Ms. JUSTICE G.ROHINI

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WRIT PETITION No.3739 of 2001

ORDER:

This writ petition is filed seeking to declare the action of the first respondent-Joint Transport Commissioner and Secretary, Regional Transport Authority, Hyderabad, in not accepting the physical fitness certificates issued by the petitioner for the purpose of obtaining the Learner's licence and Conductor's licence as arbitrary and illegal.

The petitioner states that he has completed 5½ years degree course of Bachelor of Ayurvedic Medicine and Surgery (B.A.M.S.) in the year 1976 from Osmania University and after that he also did House Surgeoncy in 1977 from the said University. Thereafter he has been practicing in Hyderabad from 1978 onwards. It is claimed that while discharging his functions he has been issuing physical fitness certificates to many people for the purpose of obtaining the Learner's Licence, Conductor's Licence, Certificates for leaves on Medical ground etc., on par with M.B.B.S. Doctors. Initially the first respondent accepted the said certificates issued by him on par with MBBS Doctors, however subsequently from 24-03-2000 onwards the physical fitness certificates issued by the petitioner were not accepted on the ground that the certificates issued by B.A.M.S. Doctors were not valid. The petitioner made a representation to the

Transport Commissioner-second respondent on 12-04-2000 stating that as per G.O.Ms.No.25 dated 06-02-1992 issued by the Government of Andhra Pradesh, Transport, Roads and Buildings Department, he is competent to issue medical certificates for the purpose of obtaining the Learner's Licence and Conductor's Licence on par with M.B.B.S. Doctors. Having considered the said request, the second respondent directed the first respondent to accept the certificates issued by the petitioner. The petitioner claims that in pursuance thereof the first respondent accepted the certificates issued by him for sometime, but for the reasons best known to him he again started not accepting the certificates since 24-02-2001. Hence this writ petition.

The contention of the petitioner is that B.A.M.S. Degree Course is recognized by Osmania University and that the petitioner and other degree holders of B.A.M.S. registered their names with the Board of Indian Medicine and the curriculum for B.A.M.S. course is similar to that of M.B.B.S. course. Hence, according to the petitioner the Doctors possessing B.A.M.S. Degree are also equally qualified to issue physical fitness certificates on par with the Doctors who are possessing M.B.B.S. Degree (Allopathy).

The first respondent filed a counter-affidavit stating that the Government of Andhra Pradesh under G.O.Ms.No.25 dated 06-02-1992 issued instructions to accept the Medical Certificates issued by the Registered Medical Practitioners possessing the degree of M.B.B.S. in Allopathy or any equivalent qualification of any University in India. However, the degree of B.A.M.S. cannot be held to be equivalent to M.B.B.S. which is not equivalent to other streams of medicine like B.A.M.S., B.H.M.S. and B.U.M.S. (Naturopathy) etc.

I have heard the learned counsel for the petitioner as well as the learned Government Pleader appearing for the respondents.

As per Section 8 (3) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), every application under sub-section (1) shall be accompanied by a medical certificate in such form as may be

prescribed by the Central Government and signed by such registered medical practitioner, as the State Government or any person authorized in that behalf by the State Government may, by notification in the Official Gazette, appoint for the said purpose. Similarly Section 30 (3) of the Act requires that every application for conductor's licence shall be accompanied by a medical certificate in such form as may be prescribed and signed by a registered medical practitioner. The procedure to issue the aforesaid certificates has been prescribed in Rules 14 (d) and 18(d) of the Central Motor Vehicle Rules, 1989 (hereinafter referred to as 'the Rules'). As per Rule 14 (d) of the Rules, an application for a driving licence shall be made in Form IV and shall be accompanied by a medical certificate in Form 1A. Rule 18 (d) of the Rules also provides that the application of renewal of a driving licence shall be accompanied by a medical certificate in Form 1A. A Perusal of Form 1A shows that it has to be issued by a Registered Medical Practitioner appointed for the purpose by the state Government or by any person authorized in that behalf by the State Government referred to under Section 8 (3) of the Act. It is not in dispute that the State Government issued G.O.Ms.No.25 dated 06-2-1992 in exercise of powers conferred under Sections 8 (3) and 30(3) of the Act read with Rules 43 and 47 of the Andhra Pradesh Motor Vehicles Rules, 1989 declaring that any registered medical practitioner possessing a degree of M.B.B.S. in Allopathy or any equivalent qualification of any University in India established or incorporated by or under Central Act or State Government Act or an institution recognized by the University Grants Commission shall be the authority competent to issue a medical certificate for the purpose of obtaining a Learner's licence and Conductor's licence.

Hence, the question is whether the degree possessed by the petitioner i.e., B.A.M.S. can be considered as equivalent to the degree of M.B.B.S. in Allopathy.

The learned counsel for the petitioner placed reliance upon Section 14 of the Indian Medicine Central Council Act, 1970

(hereinafter referred to as 'the Act, 1970') which reads as under:

“14. Recognition of medical qualifications granted by certain medical institutions in India –

(1) The medical qualifications granted by any University, Board or other medical institution in India which are included in the Second Schedule shall be recognized medical qualifications for the purposes of this Act.

(2) Any University, Board or other medical institution in India which grants a medical qualification not included in the Second Schedule may apply to the Central Government to have any such qualification recognized, and the Central Government, after consulting the Central Council, may, by notification in the Official Gazette, amend the Second Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the Second Schedule against such medical qualification declaring that it shall be a recognized medical qualification only when granted after a specified date. ”

A perusal of the Second Schedule shows that the medical qualifications in Bachelor of Ayurvedic Medicine and Surgery (B.A.M.S.) issued by Osmania University, Hyderabad, from 1976 onwards have been recognized as medical qualification for the purpose of the Act, 1970. That apart Section 17 of the Act, 1970 provides that subject to other provisions contained in the Act, any medical qualification included in the Second Schedule shall be sufficient qualification for enrolment on any State Register of Indian Medicine.

It is relevant to note that the plea of the petitioner that based on B.A.M.S. qualification obtained from Osmania University, he has enrolled with the State Register of Indian Medicine has not been disputed by the respondents.

As can be seen from the counter-affidavit filed by the first respondent, the request of the petitioner to accept the certificates

issued by him appears to have been rejected in view of the decision of this Court in W.P.No.7938 of 1991 dated 23-01-2001. In the said decision, a writ of Mandamus was sought directing the Transport Commissioner to mention that the certificates issued by the Registered Medical practitioners with qualification of M.B.B.S. alone be accepted in view of the rules as contemplated in Form 1-A and to direct the respondents 2 and 3 therein to accept only the Medical Certificates issued by the competent registered medical practitioners possessing qualification of M.B.B.S. The said writ petition was disposed of holding that the Transport Authorities are not empowered to accept the Medical Certificates issued by the Registered Medical Practitioners without having minimum qualification of M.B.B.S. degree in Allopathy or equivalent degree granted by any University established as per the notification in G.O.Ms.No.25 dated 06-02-1992. However, this Court did not go into the question whether the qualification of BAMS was equivalent to MBBS Degree in Allopathy and no finding as such was recorded on that issue. Hence, the respondents are not justified in declining to accept the certificates issued by the petitioner purportedly on the basis of the decision of this Court in W.P.No.7938 of 1991 dated 23-01-2001.

Accordingly, the writ petition is disposed of with a direction to the first respondent to consider the request of the petitioner to accept the certificates issued by him on par with M.B.B.S. degree holders and in case there is any objection, the same shall be informed to the petitioner as expeditiously as possible, preferably within a period of four weeks from the date of receipt of a copy of this order. No costs.

(G. ROHINI, J)

Date:15 -11-2005

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